

IN THE HIGH COURT OF FIJI

AT LAUTOKA

[CRIMINAL JURISDICTION]

CRIMINAL CASE NO: HAC 223 of 2019

STATE

V

JOJI SESEVU RAQIO

Counsel : Ms. Saini Naibe for the State
Mr. Josaia Niudamu for the Accused

Dates of Trial : 18-20 October 2022

Closing Submissions : 30 November 2022

Judgment : 12 May 2023

The name of the four complainants are suppressed. Accordingly, the first complainant will be referred to as "JN", the second complainant will be referred to as "SV", the third complainant will be referred to as "JV", and the fourth complainant will be referred to as "KR" respectively.

JUDGMENT

[1] As per the Information filed by the Director of Public Prosecutions (DPP), the accused above-named is charged with the following offences:

FIRST COUNT

Statement of Offence

SEXUAL ASSAULT: Contrary to Section 210 (1) (a) of the Crimes Act 2009.

Particulars of Offence

JOJI SESEVU RAQIO, between the 1st day of January 2010 and the 29th day of April 2010, at Malake Island, Ra, in the Western Division, unlawfully and indecently assaulted **JN**.

SECOND COUNT

Statement of Offence

SEXUAL ASSAULT: Contrary to Section 210 (1) (a) of the Crimes Act 2009.

Particulars of Offence

JOJI SESEVU RAQIO, on the 21st day of April 2011, at Malake Island, Ra, in the Western Division, unlawfully and indecently assaulted **SV**.

THIRD COUNT

Statement of Offence

SEXUAL ASSAULT: Contrary to Section 210 (1) (a) of the Crimes Act 2009.

Particulars of Offence

JOJI SESEVU RAQIO, between the 17th day of May 2010 and the 20th day of August 2010, at Malake Island, Ra, in the Western Division, unlawfully and indecently assaulted **JV**.

FOURTH COUNT

Statement of Offence

INDECENT ASSAULT: Contrary to Section 212 (1) of the Crimes Act 2009.

Particulars of Offence

JOJI SESEVU RAQIO, between the 16th day of May 2011 and the 19th day of August 2011, at Malake Island, Ra, in the Western Division, unlawfully and indecently assaulted **KR**.

[2] The accused pleaded not guilty to the four charges and the ensuing trial was held over 3 days. Thereafter, the Learned Counsel for the State and Defence made their closing submissions.

The Burden of Proof and the Standard of Proof

[3] Section 57 of the Crimes Act No. 44 of 2009 (Crimes Act) provides that the prosecution bears a legal burden of proving every element of an offence. The Section reads as follows:

(1) The prosecution bears a legal burden of proving every element of an offence relevant to the guilt of the person charged.

(2) The prosecution also bears a legal burden of disproving any matter in relation to which the defendant has discharged an evidential burden of proof imposed on the defendant.

(3) In this Decree (Act)—

"legal burden", in relation to a matter, means the burden of proving the existence of the matter.

[4] Section 58 (1) of the Crimes Act stipulates that a legal burden of proof on the prosecution must be discharged beyond reasonable doubt.

Legal Provisions and the Elements of the Offences

[5] As could be observed the accused is charged with three counts of Sexual Assault, contrary to Section 210 (1) (a) of the Crimes Act and one count of Indecent Assault, contrary to Section 212 (1) of the Crimes Act.

[6] The first three counts against the accused are a charges of Sexual Assault, contrary to Section 210 (1) (a) of the Crimes Act. The offence of Sexual Assault is defined in Section 210 (1) of the Crimes Act as follows:

(1) A person commits an indictable offence (which is triable summarily) if he or she—

(a) unlawfully and indecently assaults another person; or

(b)

[7] Therefore, in order to prove the first count of Sexual Assault, the prosecution must establish beyond reasonable doubt that;

- (i) The accused;
- (ii) During the specified period (in this instance between the 1 January 2010 and the 29 April 2010);
- (iii) At Malake Island, Ra, in the Western Division;
- (iv) Unlawfully and indecently assaulted JN, the 1st complainant.

[8] In order to prove the second count of Sexual Assault, the prosecution must establish beyond reasonable doubt that;

- (i) The accused;
- (ii) On the specified date (in this instance 21 April 2011);
- (iii) At Malake Island, Ra, in the Western Division;
- (iv) Unlawfully and indecently assaulted SV, the 2nd complainant.

[9] Similarly in order to prove the third count of Sexual Assault, the prosecution must establish beyond reasonable doubt that;

- (i) The accused;
- (ii) During the specified period (in this instance between the 17 May 2010 and the 20 August 2010);
- (iii) At Malake Island, Ra, in the Western Division;
- (iv) Unlawfully and indecently assaulted JV, the 3rd complainant.

[10] In Count 4 the accused has been charged with Indecent Assault, contrary to Section 212 (1) of the Crimes Act. The offence of Indecent Assault is defined in Section 212 (1) of the Crimes Act as follows:

(1) A person commits a summary offence if he or she unlawfully and indecently assaults any other person.

[11] Therefore, in order to prove the fourth count of Indecent Assault, the prosecution must establish beyond reasonable doubt that;

- (i) The accused;
- (ii) During the specified period (in this instance between the 16 May 2011 and the 19 August 2011);
- (iii) At Malake Island, Ra, in the Western Division;

(iv) Unlawfully and indecently assaulted KR, the 4th complainant.

[12] Since the elements of the offences of Sexual Assault and Indecent Assault are the same I will further elaborate upon these elements together in respect of the four counts.

[13] The first element is concerned with the identity of the person who committed the offences. The prosecution should prove beyond reasonable doubt that the accused and no one else committed the offences.

[14] The second element relates to the specific date or time period during which the offences were committed. The third element relates to the place at which the offences were committed. The prosecution should prove these elements beyond reasonable doubt.

[15] The accused would be guilty of Sexual Assault and also Indecent Assault, if he unlawfully and indecently assaulted the complainant. The word “unlawfully” simply means without lawful excuse. An act is an indecent act if right-minded persons would consider the act indecent. As such, it is for Court to consider and decide whether asking the 1st complainant to masturbate the accused’s penis until he ejaculated, is an indecent act and thereby amounts to Sexual Assault, in respect of Count 1; and whether the sucking of the 2nd complainant’s penis by the accused, is an indecent act and thereby amounts to Sexual Assault, in respect of Count 2; and whether the touching of the 3rd complainant’s penis by the accused, is an indecent act and thereby amounts to Sexual Assault, in respect of Count 3; and whether the touching/massaging of the 4th complainant’s shoulder by the accused, is an indecent act and thereby amounts to Indecent Assault, in respect of Count 4.

[16] It must also be noted that in terms of Section 129 of the Criminal Procedure Act, it is stated that no corroboration of the complainant’s evidence is necessary to prove an offence of a sexual nature; Sexual Assault and Indecent Assault are obviously considered as offences of a sexual nature. Corroborative evidence is independent evidence that supplements and strengthens evidence already presented as proof of a factual matter or matters.

The Agreed Facts

[17] Section 135 of the Criminal Procedure Act deals with “Admission of facts”. The Section is reproduced below:

135. — (1) An accused person, or his or her lawyer, may in any criminal proceedings admit any fact or any element of an offence, and such an admission will constitute sufficient proof of that fact or element.

(2) Every admission made under this section must be in writing and signed by the person making the admission, or by his or her lawyer, and—

(a) by the prosecutor; and

(b) by the judge or magistrate.

(3) Nothing in sub-section (2) prevents a court from relying upon any admission made by any party during the course of a proceeding or trial.

[18] Accordingly, the prosecution and the defence have consented to treat the following facts as “Admitted Facts”:

1. The accused is Joji Sesevu Raqio, born on the 2nd of June 1981.
2. The first complainant is JN, born on the 3rd of January 1995. He was a Class 8 student of Malake Village School in the year 2010.
3. The second complainant is SV, born on the 17th of January, 1995. He was a Class 8 student of Malake Village School in the year 2011.
4. The third complainant is JV and he was a Class 8 student of Malake Village Primary School in the year 2010.
5. The fourth complainant is KR, born on the 7th of September 1995. He was a Form 4 student of Nakauvadra High School in the year 2011.
6. The accused was teaching in Malake Village School in 2010 and 2011.

[19] Since the prosecution and the defence have consented to treat the above facts as “Admitted Facts” without placing necessary evidence to prove them, the above facts are proved beyond reasonable doubt.

Case for the Prosecution

[20] The prosecution, in support of their case, called the 1st complainant (JN), the 2nd complainant (SV), the 3rd complainant (JV), the 4th complainant (KR), and Sesoni Waqalala, the father of the 1st complainant, in that order.

[21] **Evidence of the 1st complainant JN**

- (i) *The 1st complainant's evidence was recorded in a 'closed court'.*
- (ii) *The complainant testified that he is currently 27 years old. He is residing at Malake Village in Rakiraki, Ra. He is married with 3 children. He is a Fisherman by occupation.*
- (iii) *It is an Admitted Fact that the 1st complainant was born on 3 January 1995 and was a Class 8 student at Malake Village School in the year 2010 [Therefore, in the year 2010, the 1st complainant would have been 15 years of age].*
- (iv) *The witness testified that in the year 2010, the accused, Joji Raqio was his Class Teacher. He used to teach Maths and English. He said: "His standard of teaching was very good. We usually communicate with him."*
- (v) *When asked to explain how his relationship was with the accused, the witness said: "Before the alleged incident I was really close to him because I know he has a good heart. And his connection towards his students was very good. We liked it." The witness continued: "That time plenty times he normally calls me to accompany me to town. And I liked the way he associated himself to me and the class."*
- (vi) *The 1st complainant testified to an incident which took place in the first school term of 2010 (between the 24 January 2010 to 29 April 2010). The witness said: "After midday on a Thursday, I was on my way to my house to have my lunch. My teacher Mr. Raqio called me and asked me to go to the shop and buy one bottle of coconut oil. I bought the coconut oil from the shop. On my way I passed the bottle of oil to SV (2nd complainant) as he was going to school. I went home to have my lunch. After lunch, I came back around 1.00 p.m. At the school, the teacher called me to his house. He told me to massage his body. I started massaging him from his feet coming up. I reached up to his knee. He stood up and went to the room (bedroom). He called me from the room. I went in. At the room, he was naked. He remained standing and I continued massaging from his leg. He took my hand and put it on his private part. I pulled my hand backwards and he forced my hand to touch it (his private part). I was doing that till he ejaculated."*
- (vii) *The witness was asked as to what he meant by private part. He said it was the accused's penis (soresore in iTaukei). When asked how he had felt at that moment, the witness said he was scared and frightened. "I was frightened when he was doing that act to me because it was the first time it happened to me."*

- (viii) *The witness explained that when passing the gate of the school, the first house is the accused's house. The accused had called him from there. The first part of the incident where he was massaging the accused, happened in the sitting room-the accused had been lying down on a mat in the sitting room. The accused had been wearing only his bathing towel at the time. The accused had been lying on his stomach and the witness was sitting beside his feet and massaging his feet. When he reached up to his knee, the accused stood up and went to the room and asked the witness to come to the room.*
- (ix) *When the witness went to the room, the accused had been naked and asked the witness to continue massaging him in the room so that nobody can see them. Inside the room, the massaging took place on the side of the room, besides the door. The accused had been standing there and the witness had been massaging him from behind.*
- (x) *The witness testified that after the incident, he was on his way back to school. The accused had told him not to inform anybody about what had happened and to keep the incident between them.*
- (xi) *After reaching school, the witness said that he went to the classroom and sat down but his mind was running around thinking of what had just happened. The witness said that he couldn't stop thinking about what had happened.*
- (xii) *The next day, which was a Friday, the accused had called the witness and asked him to go and put the mattress properly on the floor of his house. The witness testified: "After that I saw he was about to close the door. From there I knew that he is about to do the same thing again to me. So I ran to my parents. I saw my father (Sesoni Waqalala) and informed him of everything that had happened."*
- (xiii) *After having informed his father about what the accused had done to him, his father had gone and spoken to the accused and asked him not to repeat or do the same thing again. The witness said: "We forgave each other and everything was solved then and there."*
- (xiv) *When asked why he hadn't reported the matter to the Police as soon as the incident happened, the witness said, it was because his father had spoken to the accused and they had reconciled the matter. Later the witness said, that at the time, it did not come to his mind about the law and all that.*
- (xv) *The witness testified that this matter was finally reported to the Police when a student by the name of Jone Bose (who was in one class lower than him) had done the same act to a younger student and the parents of that student had reported the matter to the Police. When Police had taken the said Jone Bose for investigation, he had informed the Police that this same thing was done to him by his teacher (the accused). Jone Bose is now said to be married and is residing in the island of Koro, Lomaiviti.*
- (xvi) *Therefore, the investigations into this case had only commenced in the year 2011, when the witness was a Form 3 student at Nakauvadra High School.*

- (xvii) *Prior to this incident, the witness said that he and his friends (the 2nd and 3rd complainants, Nawara and Ilivasi) would go to the accused's house quite often. Even after the incident, the 1st complainant said that his relationship with the accused was normal and continued to be like before.*
- (xviii) *The 1st complainant identified Joji Raqio as the accused in the dock.*
- (xix) *The 1st complainant was cross examined by the defence. The defence also put several suggestions to the complainant in line with the defence case theory.*
- (xx) *The witness admitted that at the time the accused had called him to his house (at the time he was returning to school after lunch), that the accused was only wearing a towel. He said: "He was wearing a towel, standing from the porch and calling me."*
- (xxi) *It was put to the witness that he never exited the accused's house to go back to the classroom, when he saw the accused naked. The witness replied that it did not come to his mind as to what the accused intended to do. He had just entered the room to massage the accused (he was thinking that he was only going to massage the accused).*
- (xxii) *The witness admitted that the accused had never forced him to remain in the house. He said: "He just informed me to massage him. He only forced me to touch his penis."*
- (xxiii) *The witness was questioned about the statement he had made to the Police, on 7 September 2011.*
- (xxiv) *The Defence highlighted the following omissions in the testimony given in Court by the witness vis a vis his statement made to the Police on 7 September 2011:*
- i. *Although in his testimony in Court the witness had stated that the accused had forced his hand to touch his penis (and then masturbate him), he had made no mention of this fact in his statement made to the police.*
 - ii. *Although in his testimony in Court the witness had stated about the incident that had happened on the next day (Friday), he had made no mention of this fact that this happened the next day (Friday) in his statement made to the police.*
- (xxv) *It was suggested to the witness that on a day during this alleged period, that the accused had belted him with a stick for punching the school head boy Ilivasi. The witness said he cannot recall. It was suggested to the witness that after the accused had beaten him with the stick that he went home crying and informed his parents. The witness denied this suggestion.*
- (xxvi) *It was further suggested to the witness that he had fabricated this story. The witness said that the accused did that act.*

(xxvii) It was further suggested to the witness that even if the act had happened that he never informed his parents or his classmates because he consented to the act. The witness denied this suggestion.

(xxviii) The witness testified that the accused's house (quarters) was within the school premises. He said as you enter the school gate it is the first block house on the right.

[22] Evidence of the 2nd complainant SV

- (i) The 2nd complainant's evidence was recorded in a 'closed court'.
- (ii) The complainant testified that he is currently 27 years old. He is residing at Malake Island in Rakiraki, Ra, with his parents. He is single. He is a Fisherman by occupation.
- (iii) It is an Admitted Fact that the 2nd complainant was born on 17 January 1995 and was a Class 8 student at Malake Village School in the year 2011 [Therefore, in the year 2011, the 2nd complainant would have been 16 years of age].
- (iv) The witness testified that in the year 2011 he was residing in Malake with his parents. The accused, Joji Raqio was his Class Teacher. He used to teach all subjects. He said his relationship with the accused was good. He had known the accused for about 3 years at the time.
- (v) The witness testified to the events which took place on 21 April 2011. On that particular day he had been at school during the day. Around 8.00 p.m the same day he had been studying at his Cousin Laisenia Tuinasau's house. His house is located close to the school fence. Laisenia was 28 years old at the time and lived with his grandparents.
- (vi) The witness said that he was studying at Laisenia's house since Laisenia was assisting him in some of the lessons that he didn't know. They had been studying in the sitting room. In addition to the witness and Laisenia, the 3rd complainant JV was also present.
- (vii) The witness explained that the house had no separate bedrooms-only curtains separated the bed area and the sitting room. There was a carpet on the floor of the sitting room and also a settee. There was a bed (in the bed area) where there was a separation with the curtains. There was a kerosene lamp on inside the house.
- (viii) The witness said that after studying for 1 hour, he had slept on the carpet in the sitting room of Laisenia's house. The witness said: "I was sleeping in the night. I got a shock someone was sucking me. When I opened my eyes to see it was a male person and he ran. And he forgot his white vest just beside where I was sleeping. The next morning I met JV and he informed me that he saw Master Joji inside the house that night."
- (ix) The witness testified that he knew someone was sucking his penis, because he felt that his pants was removed and someone was sucking him (his trousers were at his knees). At the time the witness had been wearing a trouser and a

- t-shirt. When asked to explain as to what he meant by sucking him and what he was sucking, the witness explained that the person was sucking his penis (soresore).*
- (x) The witness explained that when he opened his eyes, he saw the person bending down and when he freaked out, he had run away. At the time the witness said that there was no light on in the house.*
 - (xi) When asked as to how he knew it was the accused who did this act, the witness said that he came to know when JV informed him that he was trying to do something for him also and after that he had come to the witness.*
 - (xii) The witness was asked apart from what JV told him, while he was lying down in the sitting room and he woke up suddenly when he found someone sucking his penis, how he knew it was the accused; he said it was due to the accused's vest (being found just besides where he was sleeping). He had found the vest when he woke up in the morning. He normally sees the accused wearing that vest.*
 - (xiii) The witness said that at the time of the incident he had been sleeping on the carpet in the sitting room of Laisenia's house, Laisenia was sleeping on the bed in the bed area and JV was sleeping on the settee in the sitting room.*
 - (xiv) The witness testified that the next morning he had informed his father about the incident. His father had told him to keep it to himself and not to inform anybody.*
 - (xv) The witness said that the Police had come to know about this matter because one boy by the name of Jone Bose reported the matter to the Police stating that the same thing had happened to him.*
 - (xvi) When asked why he hadn't reported the matter to the Police as soon as the incident happened, the witness said that he didn't know what to do and how to tell as he was still a kid.*
 - (xvii) When asked as to how it made him feel when he woke up and found someone sucking his penis, the witness said: "It was the first time for that to happen to me. It brought a different feeling to me. Like a feeling like I was about to come".*
 - (xviii) The witness said that after this incident, his relationship with the accused was not like before. He did not go close to the accused again and stayed away from him [although he continued going to school and the accused continued to be his Class Teacher].*
 - (xix) The 2nd complainant identified Joji Raqio as the accused in the dock.*
 - (xx) The 2nd complainant was cross examined by the defence.*
 - (xxi) The witness admitted that the blame went to the accused because of the white vest found in the house. He also agreed that there are plenty of similar white vests (worn by people) in the Malake Island. He also agreed that the accused's name was not written on the said vest or there were no marks on the vest to confirm it belonged to the accused.*

- (xxii) *The witness also admitted that it was JV who told him that he saw the accused in the house.*
- (xxiii) *The witness denied being questioned by the Head Teacher regarding this incident or that he had told the Head Teacher that the incident was not true.*
- (xxiv) *It was suggested to the witness that the accused had questioned him about this allegation and that he had informed the accused that it was not him (who had committed the act). The witness denied this suggestion and said that the accused did not question him in the said manner.*

[23] Evidence of the 3rd complainant JV

- (i) *The 3rd complainant's evidence was recorded in a 'closed court'.*
- (ii) *The complainant testified that he is currently 25 years old. He is residing at Malake Village in Rakiraki, Ra, with his father and mother. He has been residing there since birth. He is still single. He is a Fisherman by occupation.*
- (iii) *The witness testified that his date of birth is 25 December 1996. It is an Admitted Fact that the 3rd complainant was a Class 8 student at Malake Village Primary School in the year 2010 [Therefore, in the year 2010, the 3rd complainant would have been 14 years of age].*
- (iv) *The witness testified that the accused, Joji Raqio, was his Class Teacher. He used to teach Maths and English.*
- (v) *When asked how his relationship was with the accused, the witness said that it was good. He added that they would normally go with him to town. He explained that by 'they' he meant the 1st complainant (JV), the 2nd complainant (SV), Ilivasi and himself. He had known the accused for about 3 years.*
- (vi) *The 3rd complainant testified to an incident which took place in the second school term of 2010 (between the 17 May 2010 to 20 August 2010). He stated that they were getting ready for the tournament which was to be held on Friday. It was the Milo Kaji Rugby Tournament to be held at Ra Sports Grounds. The witness was taking part in the tournament. On Thursday the accused had informed him and Ilivasi Walu to come and spend the night together at the accused's house.*
- (vii) *Once they had reached the accused's house, the accused had informed that he will sleep in one bedroom and for the witness and Ilivasi to share (to sleep) in the other bedroom. The accused's house is located at Malake. When you enter the school gate, the house is on the right.*
- (viii) *The witness testified that normally they used to go to the accused's house on school days. But on that day, the accused had informed them to come to his house in the night (this was the first time they got invited to sleep at his house in the night).*
- (ix) *The witness said that while they were sleeping in their room, around 5.00 in the morning, he had felt somebody's hand touching his trousers. He had felt that hand moving up and down. After that he had turned sideways and felt*

that person hugged him and told him not to say a word and to move close to him. After that he had stood up, jumped to the other side, opened the door and run away to his house. While he was running, he turned back and saw the accused was following him.

- (x) When asked as to who he felt was touching his trousers, the witness said that it was the accused. When asked as to where and which part of his trousers was the accused touching, the witness said that he had opened the zip of his trousers and was touching his private part. The witness was asked as to what he meant by private part. He said it was his penis (soresore in iTaukei).*
- (xi) The 3rd complainant further testified that he and Ilivasi were sleeping on a mattress besides each other. There was only one mattress in the room. At the time the accused was doing this act to him, Ilivasi had been fast asleep.*
- (xii) The witness said that when he saw the accused touching his penis he had felt scared because he did not dream that the accused will do such a thing to him.*
- (xiii) The witness testified that after going to his house he had slept. He did not tell anyone as to what the accused had done to him at the time. He said he did not do so because he was still a child. He had not informed his parents because he had thought of the accused-because they were getting along well with him.*
- (xiv) The distance between his house and the accused's house was about 300 to 400 metres.*
- (xv) The witness said that the Police had come to know about this matter because one of his classmates by the name of Jone Bose had done the same act to another classmate and the matter had been reported to the Police. Jone Bose had also reported the matter to the Police stating that the same thing had happened to him.*
- (xvi) The witness said that Jone Bose and he were brought up together and also schooled together.*
- (xvii) After the said incident, the witness testified that he cut himself from associating with the accused. Even in the classroom, he didn't talk much and was trying to indicate to the accused that he did not like what he had done to him.*
- (xviii) The 3rd complainant identified Joji Raqio as the accused in the dock.*
- (xix) The witness explained further that when the accused had touched the witness's penis with his hand, he was like making his penis erect. From the time the witness had felt the accused's hand touching his trousers and moving up and down and opening his zip and touching his penis, the duration would have been around 2 minutes.*
- (xx) The 3rd complainant was cross examined by the defence.*
- (xxi) It was put to the witness that the school generator normally goes off around 10.30-11.00 p.m. The witness said the generator goes off around 9.00 p.m. Later he said that he cannot remember the exact time, as it is a long time now.*

- (xxii) *It was suggested to the witness that there is a policy that the teacher's quarters are out of bounds for the students after school. The witness agreed. However, he said that the accused had invited them that day.*
- (xxiii) *The witness agreed that Ilivasi did not witness anything that was done to him as he was sleeping.*
- (xxiv) *He also agreed that he did not report the matter to the Head Teacher or any other teachers at the time or to any close family member of his. It was suggested that he did not report the matter because he never visited the accused quarters that day. The witness denied the suggestion.*
- (xxv) *It was further suggested to the witness that the accused had never touched his penis that day because he was never in the accused's quarters. The witness denied the suggestion.*
- (xxvi) *The witness also agreed that the accused was an outsider to the Malake Island. He had come to Malake Village to teach there.*

[24] Evidence of the 4th complainant KR

- (i) *The 4th complainant's evidence was recorded in a 'closed court'.*
- (ii) *The complainant testified that he is currently 27 years old. He is residing at Malake Village in Rakiraki, Ra, with his mother and 4 siblings. His father has passed away. He is married with 2 children. They are all staying together in Malake Village. He is a Fisherman by occupation.*
- (iii) *It is an Admitted Fact that the 4th complainant was born on 7 September 1995 and was a Form 4 student at Nakauvadra High School in the year 2011 [Therefore, in the year 2011, the 4th complainant would have been 16 years of age].*
- (xxvii) *The 4th complainant testified to an incident which took place in the second school term of 2011 (between the 16 May 2011 to 19 August 2011). The witness said: "One night we were lying down at home. We got 2 houses- one is a bure house and the other is a roofing iron house. That night I was sleeping at the bure house. My other family members were sleeping in the roofing iron house. At around 12.00 midnight, when I was lying inside the bure house, I heard 2 people were drinking beside me. I woke up to see who were the 2 people drinking. I saw my elder brother and Master Joji sitting and drinking. I did not care about them. I went back to sleep....When I was lying down in the night, I was hearing like there was no one inside the house. I did not care about it. I went back to sleep. After a while I felt somebody lying next to me. I felt somebody touching my shoulder (witness showed his right shoulder). When that person touched me, I woke up to see who was doing that. I looked to my side. I saw Master Joji was lying down there".*
- (iv) *The witness explained that the 2 houses are located right inside the village. The 2 house are located about 12 to 15 metres apart. At the time there was no electricity in the village. They were only using kerosene lamps. He*

confirmed that his elder brother and Master Joji were sitting and drinking inside the bure. His elder brother name is Sulio Bulinadi.

- (v) The witness testified that he saw with his own eyes the accused lying beside him. At the time his elder brother was not in the bure. There was no one else in the bure at the time.*
- (vi) The witness was asked as to whether he knows who touched his shoulders. He answered: "I did not see him because I was lying down. When I stood up then I saw the person..... when I stood up that's the time I saw the person. I saw the accused lying down there".*
- (vii) The witness said that after the incident, he went to their other house. He did not tell anyone at home as to what happened to him in the bure. He did not even tell his elder brother.*
- (viii) The witness testified that he had known the accused from the time he came to the village. He was a teacher by occupation. He said they were best friends with the accused.*
- (ix) When asked how his relationship was with the accused, the witness said: "We were best friends. I know his heart. Plenty time he will call me and we will to his house. We will have dinner at his house. And on his pay day he would call us and we would go to town. He is a good hearted person". The witness said that after the said incident he will sometimes feel shy when he meets the accused.*
- (xxviii) The 4th complainant said that the Police had come to know about this matter because one boy by the name of Jone Bose had done the same act to another young boy in the village and the mother of that boy had reported the matter to the Rakiraki Police. Jone Bose had also been taken in for questioning. He had informed the Police everything he knew about the accused. It is only then that this matter had come to light.*
- (x) Jone Bose had mentioned all 4 complainants' names to the Police. He knows the other 3 complainants because they are staying together at the same village.*
- (xi) The 4th complainant identified Joji Raqio as the accused in the dock.*
- (xii) The witness was cross-examined by the defence.*
- (xiii) He confirmed that the accused was never his school teacher. But he knew him as a teacher because they lived in one island, one village, one school.*
- (xiv) The witness confirmed that he never saw the person who touched him at the time that person had been touching him. He also admitted that if someone had touched him, he doesn't know if it was intentional or unintentional.*
- (xv) The witness was questioned about the statement that he had made to the Rakiraki Police on 7 September 2011.*
- (xvi) The defence highlighted the following inconsistency in the testimony given in Court by the witness vis a vis his statement made to the Police:-*

His testimony in Court is that it was only his brother and the accused who were drinking in the bure. However, in his statement to the police he has stated as follows: "I was at home sleeping when some other people were drinking liquor with my brother Suli and Mr. Joji".

(xvii) It was suggested to the witness that this allegation he has made against the accused has been fabricated and that the accused had never been at his place (on the day he alleges). The witness denied the suggestion and said that he could identify the accused because he saw him with his own eyes.

[25] Evidence of Sesoni Waqalala

- (i) The witness testified that he is 56 years of age and residing at Malake Village with his family. He is now retired. He has been residing in Malake for more than 30 years. He is married and has 8 children. The 1st complainant JN is his son.*
- (ii) The witness confirmed that the 1st complainant's date of birth was 3 January 1995 and that he attended primary school at Malake Village Primary School. He was a Class 8 student in the year 2010. The accused was teaching at Malake Village School that year.*
- (iii) The witness testified to an incident which happened in the year 2010, when the 1st complainant was a Class 8 student. The witness said he was farming at the time. He had left the farm and accompanied the 1st complainant to school. The 1st complainant had told him that the accused had told him to take a bottle of oil and to masturbate him (the accused).*
- (iv) When asked as to how he had felt at the time, the witness said that he did not get angry because they were related-himself and the accused. He went to advise both of them (meaning the accused and his son).*
- (v) The witness had met the accused after school on that particular day. He said he had felt sympathetic towards the accused because they were related. The witness testified as follows: "I forgave him and I advised him and told him to end it and not to do the same thing again because we were related".*
- (vi) When asked as to what the accused's reaction was, the witness said: "He accepted what I told him and I told him, I am solving this issue now and if it happens ever again, we will also be blamed for that".*
- (vii) The witness explained that he did not report the matter to the Police when his son had informed him because of his relationship with the accused and because he had spoken to both of them and dealt with the issue.*
- (viii) He too confirmed that the matter had only come to light when Jone Bose was taken in for questioning by the Police on a complaint made by the mother of a younger boy (younger student).*
- (ix) The witness identified Joji Raqio as the accused in the dock.*

[26] At the end of the prosecution case Court decided to call for the defence of the accused in respect of all four counts. The accused was then explained his legal rights. I explained to him that he could address Court by himself or his Counsel. He could also give sworn evidence from the witness box and/or call witnesses on his behalf. He could even remain silent. He was given these options as those were his legal rights. I explained to the accused that he need not prove anything. The burden of proving his guilt rests entirely on the prosecution at all times.

[27] The accused decided to testify on his own behalf. A diagram/sketch showing the layout of the Malake Village School was tendered to Court as Defence Exhibit DE1.

Case for the Defence

[28] Evidence of Joji Sesevu Raqio

- (i) *The witness testified that he is 41 years of age (his date of birth is 2 June 1981). He is married and having one son. He is a Primary School Teacher by occupation. He is currently residing at Mataso Primary School compound in Ra and teaching in that school.*
- (ii) *The witness said that he obtained his teaching qualification from Lautoka Teacher's College in the year 2003. He obtained a Certificate in Primary Teaching. He has been teaching since 2003 under the Ministry of Education. Thus, he has been teaching for 19 years.*
- (iii) *During those 19 years he has taught in 3 schools. His first posting was at Nasau District School in Ra (from 2004 to 2008); his second school was Malake Village School (from 2009 to 2011) and his current school is Mataso Primary School, where he has been teaching since 2012.*
- (iv) *The witness said that he is originally from Nasaqalau, Lakeba in Lau.*
- (v) *It is an Admitted Fact that the witness was teaching at Malake Village School in 2010 and 2011.*
- (vi) *The witness testified that in the year 2010 he was teaching Classes 7 and 8. It was a composite class in one classroom. In addition, he held the position of Executive Teacher. He explained that a small school like Malake Village School did not have an Assistant Head Teacher. Instead it had an Executive Teacher. This position was usually held by the most senior teacher after the Head Teacher.*
- (vii) *The witness said that his relationship with his students was excellent because he believed that the teacher needs to get down to the level of the students. But the line needs to be clearly define. In terms of discipline, at that particular time, there was a policy that if there were issues with discipline, the students*

would be counselled a maximum of three times and we could resort to corporal punishment after that.

- (viii) *The witness said that the subjects he taught in 2010 were English, Maths, Basic Science, Social Science, Healthy Living and Fijian. He also taught Physical Education, Music, Art and Craft. He said that the Healthy Living subject dealt with Reproductive Health – the reproductive system and the ‘good touch’ and the ‘bad touch’.*
- (ix) *The witness stated that the school policy was that student were not allowed to go to a Teachers’ quarters during the school week. However, during the weekends they were permitted.*
- (x) *The witness testified that at the time there were a total of 4 teachers, including himself – 2 men and 2 female. This included the Head Teacher as well.*
- (xi) *The witness testify that the school is located in the middle of the Island towards the end of the village. A diagram/sketch showing the layout of the Malake Village School was drawn by the witness and tendered to Court as Defence Exhibit DE1. The diagram showed where exactly his quarters was located in relation to the school entrances (main entrance and side entrance), the playground and the classes. The witness said that there were 5 teachers’ quarters within the premises.*
- (xii) *The witness said that his relationship with the villagers was also excellent.*
- (xiii) *The witness totally denied the allegations made against him by all four complainants.*
- (xiv) *He testified that during the first school terms of 2010, he had disciplined the 1st complainant JV. He explained that after lunch on a particular Friday (the school had sports immediately after lunch on Friday), the Head boy of the school Ilivasi Valu, had come crying to him and informed that the 1st complainant had punched him. The witness had then called the 1st complainant and asked him whether that was true. After a while, the 1st complainant had admitted that it was true. The witness said, that at the time he had lost his temper and had inflicted corporal punishment on the 1st complainant’s hand with the moli stick (lemon stick).*
- (xv) *The 1st complainant had ended up crying. The witness realized that the 1st complainant would have been embarrassed as the whole class was looking at him crying. So, he had sent the 1st complainant to go and wash his face. The 1st complainant had not returned to school that day. The next time he came to school was the following Monday.*
- (xvi) *The witness denied that he had requested the 3rd complainant to come and sleep over at his quarters (during the second school term in 2010).*
- (xvii) *The witness testified that a student by the name of Jone Bose had tried to Indecently Assault a male student of Class 3 during the school holidays. This matter had not been initially reported to the School Teachers as it was school holidays.*

- (xviii) *Regarding the apology made by him to the 1st complainant's father, the witness said that JN's father had come to meet him in school, but had come alone. They had met at the playground. It had been discussed that the witness would return to his place/home after he had dispersed the students. Because he was the Teacher on duty on that day. The witness continued that after dispersing the students for the day, he had gone to the 1st complainant's father's house. During the discussion that followed the witness said that he had apologized for the corporal punishment he had inflicted on the 1st complainant.*
- (xix) *The witness explained why it was not possible for him to have called the 1st complainant to his house around 1.00 p.m. on the date alleged, wearing only a towel around him.*
- (xx) *When asked as to what would have been the cause of these allegations being brought against him by the students, the witness said: "I believe that the allegations were fabricated because they were trying to save Jone Bose. Because he was under investigations and I believe they colluded together to make me the scapegoat".*
- (xxi) *The witness continued that one needs to understand the relationship these boys had with Jone Bose. He was like their ring leader/group leader. Jone Bose was the only student in his class who he could not work with in the class room.*
- (xxii) *The witness was cross examined at length by the Learned State Counsel and several suggestions were put to the witness in line with the prosecution case theory.*

Analysis

[29] As stated before, the prosecution, in support of their case, called the 1st complainant (JN), the 2nd complainant (SV), the 3rd complainant (JV), the 4th complainant (KR), and Selsoni Waqalala, the father of the 1st complainant, in that order. The accused decided to testify on his own behalf.

[30] The burden of proving each ingredient of the charges rests entirely and exclusively on the prosecution and the burden of proof is beyond a reasonable doubt. Therefore, it is incumbent on the prosecution to prove all the elements of the four charges beyond reasonable doubt. I have made reference to the elements that the prosecution has to prove in paragraphs 7, 8, 9 and 11 of this judgment, respectively.

[31] As I have stated before, in this case it has been agreed by the prosecution and the defence to treat certain facts as agreed facts without placing necessary evidence to

prove them. Therefore, those facts are considered as proved beyond reasonable doubt.

[32] Based on the said admitted facts it is admitted that the accused was teaching at Malake Village School in 2010 and 2011. It is also admitted that the 1st complainant (JN) was a Class 8 student of at Malake Village School in the year 2010; that the 2nd complainant (SV) was a Class 8 student of at Malake Village School in 2011; that the 3rd complainant (JV) was a Class 8 student of at Malake Village Primary School in 2010; and that the 4th complainant (KR) was a Form 4 student of at Nakauvadra High School in 2011. Therefore, the identity of the accused is not in dispute, as he was well known to the four complainants.

[33] The primary issue of dispute in this case is the physical act, namely whether the accused unlawfully and indecently assaulted the four complainants, in the manner they have testified to.

[34] I have summarized the evidence of all witnesses led during the trial.

[35] The accused totally denies all the allegations made against him by the four complainants. The defence position is that these allegations were fabricated against the accused by the four complainants. He contends that the allegations were fabricated against him due to the fact that the complainants' were trying to save Jone Bose, who was under investigation. The accused's position is that they colluded together to make him the scapegoat.

[36] The four complainants testified as to how the accused had committed the alleged offences on them. The four complainant's were all juveniles at the time the accused allegedly committed the above offences on them. It is an admitted fact that the 1st complainant's date of birth is 3 January 1995 and he was 15 years of age at the time of the offending. It is an admitted fact that the 2nd complainant's date of birth is 17 January 1995 and he was 16 years of age at the time of the offending. The 3rd complainant's date of birth is 25 December 1996 and he was 14 years of age at the time of the offending. The 4th complainant's date of birth is 7 September 1995 and he was 15 years of age at the time of the offending.

[37] With regard to the fourth count of Indecent Assault, the 4th complainant's testimony is that he was sleeping in their bure house. Around 12.00 midnight he had heard 2 people drinking besides him. On waking up he had seen the 2 people drinking were his elder brother (Sulio Bulinadi) and the accused. He had gone back to sleep. After a while he had felt somebody lying next to him and touching his shoulder (witness showed his right shoulder). When that person touched him he had woken up to see who it was. When he looked to his side he had seen the accused was lying down there. There was no one else in the bure at the time.

[38] The 4th complainant was asked as to whether he knows who touched his shoulders. He answered: *"I did not see him because I was lying down. When I stood up then I saw the person..... when I stood up that's the time I saw the person. I saw the accused lying down there"*.

[39] Therefore, a reasonable doubt has been created as to whether it was the accused who had actually touched the shoulder of the 4th complainant at that time. The benefit of such doubt has to be given in favour of the accused. In any event, in my opinion, the mere touching of a person's shoulder, will not amount to an unlawful and indecent act.

[40] Accordingly, considering the nature of all the evidence before this Court, it is my considered opinion that the prosecution has failed to prove the charge of Indecent Assault with which the accused has been charged in Count 4. Accordingly, the accused is found not guilty and acquitted of the said charge.

[41] With regard to the first three counts of Sexual Assault, the 1st, 2nd and 3rd complainants have testified to the manner in which the accused had committed the alleged offences on them.

[42] In this case the defence is alleging that the complainants have colluded together and made up this whole story against the accused in order to save Jone Bose, who was under investigation. However, it must be borne in mind that the three complainants in this case are not merely complaining of an isolated incident or a single act. Here the three complainants have testified to distinct acts which the accused perpetrated on them, on three separate occasions, during a period of over one year. Therefore, it is the opinion of this Court that it is highly unlikely for the three complainants, who were

merely 14-16 years old at the time, to make up or manufacture such a sequence of events against the accused, unless the said incidents really took place.

[43] Therefore, considering the totality of the evidence in this case, it is my opinion, that the defence version cannot be accepted as truthful and reliable and I reject the defence version, in relation to the first three counts of Sexual Assault.

[44] The Defence attempted to impeach the three complainants' credibility during their cross examination by stating that the complainants did not complain of the incidents immediately as it happened.

[45] I agree that the matter was formally reported to the police only in September 2011. This was nearly one year after the alleged incidents of Sexual Assault that the 1st and 3rd complainants had complained about and over 4 months after the alleged incident of Sexual Assault that the 2nd complainant had complained about.

[46] It is in evidence that this matter finally came to light and was reported to the Police when a student by the name of Jone Bose (a fellow student at Malake Village School) had done the same act to a younger student and the parents of that student had reported the matter to the Police. When Police had taken the said Jone Bose for investigation, he had informed the Police that this same thing was done to him by his teacher, the accused. Thereafter, investigations into this case had commenced.

[47] However, this Court is conscious of the fact that children do not always react the same way to sexual acts as adults would. It would be a mistake to think that children behave in the same way as adults, because their reaction to events is conditioned by their personal experience and immaturity and not by any moral or behavioural standard taught or learned.

[48] The three complainants have clearly testified as to the reasons for the delay in reporting the matter to the Police. The 1st complainant had even informed his father the very next day about what the accused had done to him. However, since the accused was the 1st complainant's School Teacher and was well known to them, his father had spoken to the accused and they had reconciled the matter at that time. In these circumstances, I am satisfied with the three complainants' explanation for the delay in reporting the matter to the Police.

- [49] The defence also attempted to impeach the 1st complainant's credibility by highlighting two omissions in his statement made to the Police on 7 September 2011, in comparison to the testimony given by him in Court. I have identified and made reference to the said inconsistencies when summarizing the 1st complainant's evidence.
- [50] In *Sivoinatoto v. State* [2018] FJCA 68; AAU0049.2014 (1 June 2018); the Fiji Court of Appeal discussed as to how a Court should deal with issues arising out of contradictions and omissions.
- [51] Therefore, having duly considered the explanations offered by the 1st complainant during his testimony, it is the opinion of this Court that the said explanations are reasonable and acceptable. As such, I am of the opinion that the reliability and credibility of the said evidence is unaffected.
- [52] Having analysed all the evidence in its totality, it is my considered opinion that the 1st, 2nd and 3rd complainant's evidence, can be accepted as truthful, credible and reliable. The three complainants withstood the rigorous cross examination by the Defence and remained consistent throughout their evidence, in relation to the material particulars of this case.
- [53] I also accept the evidence of the 1st complainant's father, Selsoni Waqalala, as truthful and reliable. He was the recent complaint witness in respect of the incident which happened to the 1st complainant. He testified that the 1st complainant had told him (the day after the alleged incident) that the accused had wanted the 1st complainant to take a bottle of oil and to masturbate him (the accused).
- [54] The above clearly qualifies as a recent complaint. It is trite law with regard to recent complaint evidence that the complainant need not specifically disclose all of the ingredients of the offences and describe every detail of the incidents, but the complaint should contain sufficient information with regard to the alleged conduct of the accused. I am satisfied that the 1st complainant made a proper complaint in this case. Accordingly, I consider that his credibility is strengthened in view of that recent complaint.

[55] I must emphasize that I have borne in mind that the recent complaint is not evidence of facts complained of, nor is it corroboration. It goes to the consistency of the conduct of the 1st complainant with his evidence given at the trial. It goes to support and enhance the credibility of the 1st complainant.

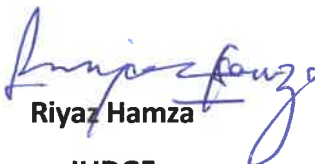
[56] It must also be mentioned once again that in terms of the provisions of Section 129 of the Criminal Procedure Act, where any person is tried for an offence of a sexual nature, no corroboration of the complainant's evidence shall be necessary for that person to be convicted.

[57] Considering the nature of all the evidence before this Court, it is my considered opinion that the prosecution has proved its case beyond reasonable doubt by adducing truthful and reliable evidence satisfying all elements of the charges of Sexual Assault with which the accused has been charged from Counts 1, 2 and 3.

[58] In the circumstances, I find the accused guilty of the three counts of Sexual Assault with which he is charged.

[59] Accordingly, I convict the accused of the three counts of Sexual Assault.





Riyaz Hamza

JUDGE

HIGH COURT OF FIJI

AT LAUTOKA

Dated this 12th Day of May 2023

Solicitors for the State: Office of the Director of Public Prosecutions, Lautoka.

Solicitors for the Accused: Niudamu Lawyers, Barristers & Solicitors, Lautoka.